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SOME REMARKS ON THE LEGAL STATUS OF THE UNBORN AND THE NEWBORN IN GRECO-ROMAN EGYPT: HUMAN BEING OR FUTURE HEIR?*

* I would like to thank professor Bernhard Palme and the Papyrus Department of the Austrian National Library in Vienna, where I carried out my postdoctoral research and the preparation of this paper, as an Ernst Mach grant holder (Austrian Agency for International Cooperation in Education and Research OeAD).

Papyrologica Lupiensia, n. 28, 2019
ISSN 1591-2140

Abstract
The status of the unborn child as a human being in the ancient world has raised many different opinions between scholars from different scientific fields. Though the literary and archaeological evidence for the status and life of children in antiquity has been thoroughly discussed, some aspects have received less detailed examination, like the legal and property rights of the fetus and the newborn. Papyrus documents, mainly petitions, private contracts and letters, can offer valuable information about the attitude towards the fetus and the infant in antiquity. This paper will shed light on the status of the unborn and newborn children in Greco-Roman society in the light of papyrus documents and investigate whether unborn and newborn children were legally protected as (potential) human beings and/or as future legal heirs of the patrimony.

Keywords
Roman Egypt, papyrus documents, newborn, unborn

The majority of political and legal systems in ancient and modern societies tend to recognize that human life begins before birth. However, the status of the fetus is a disputable matter, which has raised various philosophical and social theories since antiquity. For Aristotle, human life started at a certain point during the pregnancy, when the fetal parts were formed and the movements were perceptible. It is the time, when the unborn becomes a living being. The philosopher also believed that the *nous* was potentially present since the time of conception, because it was transmitted by the male seed[1]. Moreover, the Platonic school and the Pythagoreans believed in animation at conception. The pseudo-Galenic author of *Whether What Is Carried in the Womb Is a Living Being* explains that the soul was contained in the seed and the embryo was human from the beginning[2]. On the other hand, the Presocratics, such as Empedocles, and later the Stoics, defended the idea that human life started only at birth[3].

[1] Aristotle, *De Generatione Animalium* 736a-b, 737a33.

[2] *An animal sit quod est in utero* 19.158-81 Kohn. See also A.K. Kapparis, *Abortion in the ancient world*, London 2002, pp. 201-213.

[3] Pseudo-Plutarch has offered a useful survey of their different opinions (Pseudo-Plutarch,

The theory of the gradual development of the fetus into human being has found many followers from antiquity to the present. All agree that the embryo acquires human identity, while growing in the womb, after conception, but before birth[4]. Ancient Greek authors refer to legal traditions which tended to recognize, at least partially, the human status of the fetus. For example, an Athenian law allowed a pregnant woman to remain in her dead's husband's *oikos* in the hope that she would produce an heir[5], while an Egyptian legal tradition prohibited the execution of a pregnant woman until the delivery of the baby[6]. Latin authors, such as Virgil[7] and Juvenal[8], appear also to recognize to some extent the human status of the unborn. The *Digest* includes legal provisions concerning pregnant women which imply that Roman law cared for the rights of the embryo[9]. Moreover, archaeological evidence shows that the embryo was perceived as an anticipated family member and could be mourned and safeguarded through a mortuary passage like older children[10].

On the other hand, abortion and exposition were not forbidden in the ancient world and were not considered as homicide or attempted homicide. The status of the unborn child as a human being has raised many different opinions between scholars from different scientific fields. Though the literary and archaeological evidence for the status and life of children in antiquity has been thoroughly discussed, some aspects have received less detailed examination, like the legal and property rights of the fetus and the newborn. Papyrus documents, mainly petitions, private contracts and letters, can offer valuable infor-

Moralia De Placitis Philosophorum 5.15, 907). Veronique Dasen has also discussed the status of the embryo and the definition of life and human identity in the ancient world. See V. Dasen, *Becoming Human: From the Embryo to the Newborn Child*, in J.Evans-Grubbs/T. Parkin (eds.), *The Oxford Handbook of Childhood and Education in the Classical World*, New York 2013, pp. 17-39, esp. p. 19; A.E. Hanson, *The gradualist view of fetal development*, in M.H. Congourdeau-L. Brison-J.L.Solère (éds.), *L'embryon: Formation and Animation Antiquité grecque et latine traditions hébraïque, chrétienne et islamique*, Paris 2008, pp. 95-108.

[4] Kapparis, *Abortion* cit., pp. 33-34.

[5] Demosthenes 43.75. See also Kapparis, *Abortion* cit., p. 40.

[6] Diodorus Siculus I 77.9-10. In his eyes, the killing of a pregnant woman was considered as injustice to the innocent child, but the father's rights came first.

[7] Vergilius, *Aeneid.* 6.427 *infantumque animae flentes*.

[8] Juvenal, *Satires* 6.596 *homines in ventre*.

[9] Kapparis, *Abortion* cit., p. 175. In *Dig.* 11.8.2 it is provided that if a woman died while pregnant, her burial was forbidden until the fetus has been removed from her body to ensure that no potentially live offspring was buried with her. Cf. *Exodus* 21.22-25: Mosaic Law also provided penalties for those who unintentionally caused the death of a fetus: a fine if the embryo was lost and death if the mother also died.

[10] Dasen, *Becoming Human* cit., p. 35.

mation about the attitude towards the fetus and the infant in antiquity. This paper will shed light on the status of the unborn and newborn children in Greco-Roman society in the light of papyrus documents and investigate whether unborn and newborn children were legally protected as (potential) human beings and/or as future legal heirs of the patrimony.

The Legal Status of the Unborn.

Death of the Fetus: Miscarriage and Abortion.

Private letters from Roman Egypt provide us with rich details about death in childbirth, because of mothers' physical weakness or poor conditions of living[11]. In a letter from the third or fourth century CE, Zoilos wrote to his mother Theodora[12]. He also referred to his sister's disease, wishing that she would give birth to a healthy seven-month baby. Death in childbirth because of various reasons was common in all social classes, while a considerable number of infants died during the first year of life[13]. For instance, in PFouad I 75 from the first century CE, Thaubas announced to her father the death of her sister Herennia and of her eight-month baby[14]. The writer described that four days after giving premature birth to a dead child, Herennia also died. Letters belonging to this family show that Herennia was literate and she may have come from a well-off environment. However, she did not gave birth to a healthy child, a fact that could be related to her being sick or weak.

Miscarriages are also documented in ancient sources, but their reasons are

[11] In the ancient world, infant mortality was much higher than that of mothers in childbirth. For maternal infanticide in the ancient world see also C.V. Laes-J. Strubbe, *Youth in the Roman Empire. The Young and the Restless Years?*, Cambridge 2014, p. 12.

[12] *SB* XVI 12606.

[13] 20-40% of all newborns in ancient world died within the first year and almost half did not survive until their tenth birthday. See T.G. Parkin, *Demography and Roman Society*, Baltimore-London 1992, p. 92; M. Carroll, *Infant Death and Burial in Roman Italy*, «JRA» 24 (2011), pp. 99-120, esp. p. 103.

[14] See also H.C. Youtie, *Notes on Papyri and Ostraca*, «TAPhA» 89 (1958), pp. 374-407; A. Geiseen-R. Coles-L. Koenen, *Some Corrections and Notes to P.Fouad*, «ZPE» 11 (1973), pp. 235-239, esp. 239; R.S. Bagnall-R. Cribiore, *Women's letters from Ancient Egypt, 300 BC-AD 800*, Ann-Arbor 2006, pp. 133-134. Cf. also A.E. Hanson, *A long-lived 'quick-birther' (oky-tokion)*, in V. Dasen (éd.) *Naissance et petite enfance dans l'Antiquité. Actes du colloque de Fribourg, 28 novembre-1er décembre 2001*, Orbis Biblicus et Orientalis, 203, Fribourg-Goettingen 2004, pp. 265-280. Herennia is also know from other letters, such as *SB* VI 9122, in which she writes to her father asking some goods.

not always clear. Papyrus petitions submitted to the authorities of Egypt give evidence of several miscarriages caused by physical violence against expectant mothers. As Maryline Parca has pointed out, in these petitions the potentially grave effects of the battery onto the victim's condition were usually emphasized[15]. The beating of a pregnant woman is reported in a letter[16] from the second century BCE written by Sabbataios, the victim's husband. Sabbataios requested that the attacker – a woman perhaps of Jewish status, like Sabbataios and his wife – should be imprisoned, until the outcome of the attack was investigated. He stressed that his wife's life was in danger, when mentioning the risk of miscarriage. From Roman times, in a petition of 47 CE, a villager accused an associate, or probably his employer, of having attacked his pregnant wife during a quarrel over wages and as a result he made her miscarry and suffer risk even to her own life[17]. The petitioner related miscarriage to the threat of the woman's death: «He did violence to me and to my wife Tanouris, daughter of Heronas, in Areos *kome* mentioned above. Moreover, he beat my wife Tanouris with many unsparing blows on every part of her body that he could find, though she is pregnant. As a result, the fetus came out dead, and now she is laid up and her life is in jeopardy»[18]. Moreover, in *SB* X 10239 from the first century CE, Tryphon's first wife Demetrous with her mother attacked his second wife Saraeus, who was by that time pregnant, causing her to miscarry[19]. Tryphon in his petition stressed that the two women did not respect Saraeus' condition. A few years later, he submitted a new petition against a woman, whose name is lost from the papyrus, who attacked both him and his wife[20]. Saraeus was again pregnant and the beating put her life in danger. In a petition from the second century CE, a violent attack by two women against two sisters

[15] M.G. Parca, *Violence by and against women in documentary papyri*, in H. Melaerts-L. Mooren (éds.), *Le role et le statut de la femme en Égypte Hellenistique, Romaine et Byzantine: Actes du colloque international: Bruxelles -Leuven 27-29 Novembre 1997*, Studia Hellenistica, 37, Leuven-Paris-Sterling-Virginia 2002, pp. 283-296, esp. pp. 292-293.

[16] PTebt III 800 (= CPapJud 1.133) of 153 or 142 BCE. See also R.S. Kraemer, *Women's religions in the Greco-Roman world: a sourcebook*, New York-Oxford 2004, p. 124 nr. 50.

[17] PMich V 228. See also J.L. Rowlandson, *Women and Society in Greek and Roman Egypt: A Sourcebook*, Cambridge 1998, p. 94 nr. 229; A.Z. Bryen, *Violence in Roman Egypt: A Study in Legal Interpretation*, Pensylvania 2013, p. 223 nr. 23.

[18] Bryen, *Violence in Roman Egypt* cit., p. 223 nr. 23.

[19] See also J.E.G. Whitehorne, *Tryphon's Second Marriage*, in *Atti del XVII Congresso Internazionale di Papirologia*, vol. II, Napoli 1984, pp. 1267-1274, esp. p. 1270; M.V. Biscottini, *L'Archivio di Tryphon tessitore di Oxyrhynchos*, «Aegyptus» 46 (1966), pp. 186-292, esp. pp. 218-219.

[20] *SB* X 10244. See also Bryen, *Violence in Roman Egypt* cit., p. 223 nr. 26.

in their own house is also described[21]. One of the victims was pregnant and her life was put into danger by the beating. The crimes described in the above petitions belong to the category of *iniuria* (ὕβρις). Bodily harm inflicted on a freeborn person could be a crime of *hybris* in Greco-Roman Egypt, where different legal traditions coexisted and interacted[22], and serious threat to the health of the victim constituted an aggravating circumstance that worsened the criminal's penalty[23]. If the victim died, the assault against him/her would be treated as murder. But if the victim was pregnant and only the fetus died, the violent attack was not considered homicide.

From the fourth century, in PCairGoodsp 15 Aurelia Eus complained that a man and some women disturbed her in her well-established and rightful possession of a piece of land. The invaders also attacked two women who came to help her and as a result one of them, Taesis, who was pregnant, suffered a miscarriage. In POxy LI 3620 Aurelius Thonius asked the *nyctostrategi* to send him a midwife in order to examine his wife's state of health. She was attacked at their home by a woman and her slave. The wife was probably pregnant and her husband planned to submit the medical report to the authorities in order to be used by him in the trial against his wife's attackers[24]. In most of the cases the attackers of a pregnant woman were female. This is a somewhat surprising, because women were supposed to better understand the special situation of another woman who was pregnant. However, the reasons of the pregnant's attack were based on economic or personal disputes. Sophie Adam has discussed several such documents in the context of her research on the legal status of the pregnant woman[25]. She has pointed out that only the threats to the battered

[21] PHamb IV 240. See also Bryen, *Violence in Roman Egypt* cit., p. 228 nr. 37.

[22] Hybris was highly distinctive and pervasive feature of ancient Greek culture and took mainly the form of physical violence. For a discussion of *hybris* in the ancient Greek law see for example D.M. MacDowell, *Hybris in Athens*, «G&R» 23(1) (1976), pp. 14-31. In Roman law, *iniuria* embraces particular crimes, both bodily injuries (*iniuria re facta*) as well as offenses against the good reputation of a person, as defined in the Twelve Tables, in the praetorian edict, in the Lex Cornelia de iniuriis, and later in imperial constitutions. See A. Berger, *Encyclopedic Dictionary of Roman Law*, American Philosophical Society, 43 (2), Philadelphia 1953, pp. 502-503. Moreover, Taubenschlag has pointed out that despite the differences between the law of the χώρα and the Alexandrian one in Roman Egypt, local law had also a general *actio iniuriarum* for all bodily injuries, verbal insults and contemptuous conduct. See R.S. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri: 332 B.C.-640 A.D.*, Warszawa 1955, pp. 435-437. For bodily injuries cf. PEnt 82 (= MChr 39).

[23] Taubenschlag, *The Law of Greco-Roman Egypt* cit., p. 441.

[24] Cf PWashUniv I 36.

[25] S. Adam, *La femme enceinte dans les papyrus*, «Anagennesis» 3 (1983), pp. 9-19. See also Parca, *Violence* cit., pp. 291-293. Cf. PSI III 167.

mother's life were qualified as aggravating circumstances in penal law, while punishment for the unborn child's death is never sought in the petitions documenting violence against pregnant women[26].

In addition, abortion was a common phenomenon in ancient cultures such as Assyrians, Babylonians, Greeks, Romans and Egyptians, but most of the information comes from imperial times[27]. It was dangerous for the mother and sometimes did not produce the desired result. As per Roman Egypt, we hear almost nothing in papyrus documents about its practice or its probable prohibition[28]. We can be sure that abortion raised various questions of morality and although it could be a common practice, literary and legal sources from Greco-Roman world allude that it could be prohibited in some cases[29]. In Roman Egypt, the coexistence of different legal and social traditions had as a result the interaction between them. A typical example is the feast of the fortieth day found in a papyrus from the Roman Fayum, which became more meaningless in Christian tradition[30]. In many cultures, forty days are the average period a

[26] See Parca, *Violence* cit., p. 293; Adam, *La femme enceinte* cit., pp. 16-19.

[27] For the practice of abortion in the ancient world see Kapparis, *Abortion* cit. See also E. Eyben, *Family Planning in Graeco-Roman Antiquity*, «AncSoc» XI-XII (1980-1), pp. 5-82, esp. p. 11.

[28] Cf. *SB* I 3451 from the first century BCE where several regulations about entrance in a temple relating to an association are described. There is also reference to abortion or miscarriage.

[29] Pseudo-Galen (*An animal sit quod est in utero* Kohn 19.179) cites that Lycurgus and Solon had enacted a law against abortion, but there are no other references. Cf. Plutarch, *Lycurgus* 3, where Lycurgus deceived the pregnant wife of his dead brother and stopped her from having an abortion, though he felt hate against the woman's character, when he was informed about her plan of abortion. Then, by a trick he made sure that the child was born and brought to him. However, we cannot be sure about the information provided by Pseudo-Galen, because this work comes from late antiquity and the author may have not used reliable sources from the classical period. See also Kapparis, *Abortion* cit., p. 178. In a few fragments of a speech *On Abortion* attributed to Lysias it is not clear whether the embryo is considered as human being and whether a woman who procured an abortion can be prosecuted for murder: εἰ τὸ ἔτι ἐγκυούμενον ἄνθρωπός ἐστι, καὶ εἰ ἀνεύθυνα τὰ τῶν ἀμβλώσεων ταῖς γυναιξί. See Lysias fragm. 19-24; Theon, *Progymnasmata* 2 Spengel 2.69. For Lysias' speech see also G. Glotz, *La solidarité de la famille dans le droit criminel en Grèce*, Paris 1904, p. 353; Eyben, *Family Planning* cit, p. 21; Kapparis, *Abortion* cit., pp. 177-178 and 185. The status of the aborted fetus was probably defined according to its formation stage in the ancient world. For example, in the sacred law from Cyrene from the fourth century BCE, pollution (*miasma*) of the mother who procured an abortion differed according to whether the fetus had recognizable form or not. See *SEG* 9.72, 24-27; for translation see R. Parker, *Miasma. Pollution and Purification in Early Greek Religion*, Oxford 1983, p. 346.

[30] PFay 113. See also A. Nifosi, *Becoming a Woman and Mother in Greco-Roman Egypt: Women's Bodies, Society and Domestic Space (Medicine and the Body in Antiquity)*, Cambridge-New York 2019, p. 149.

mother needs to recover from the dedicate phase of the birth, but it is also connected to the social recognition of an infant. In addition, Veronique Dasen has pointed out that according to some ancient sources neither aborted nor newborns had their own right to life before the social recognition by the father about one week after delivery[31]. While this rite is not testified by juristic texts or papyrus documents, such as birth declarations, several Romanists have accepted that a formal "lifting" ceremony[32] was necessary for a Roman father to accept a newborn child in his family[33]. Most scholars believe that if abortion was punished in some cases, it would be probably because the husband was wronged by his wife and lost his future legal heir[34]. However, there was no formal legal provision until the early third century CE, probably because of the uncertainty of the human status of the unborn, which is also expressed in medical and philosophic literature. Abortion could not be regarded as murder

[31] Dasen, *Becoming Human* cit., p 26; V. Dasen, *Childbirth and Infancy in Greek and Roman Antiquity*, in B. Rawson (ed.), *Companion to Families in the Greek and Roman World*, Oxford 2011, pp. 291-314, esp. pp. 303-304. It can also be said that the child was born twice: first biologically and then socially. The eighth day after the birth of a baby girl or the ninth day after the birth of a baby boy was called *dies lustricus* («purification day»). The child and the mother were ritually purified on this day in Roman society. See Festus, *De sign. Verb*. 107-108 (ed. Lindsay); Macrob., *Sat.* I 16.36. See also M.L. Hänninen, *From Womb to Family: Ritual and Social Conventions Connected to Roman Birth*, in K. Mustakallio-J. Hanska-H.L. Sainio-V. Vuolanto (eds.), *Hoping for Continuity Childhood, Education and Death in Antiquity and the Middle Ages*, Acta Instituti Romani Finlandiae, 33, Roma 2005, pp. 49-59, esp. p. 57; J.U. Krause, *Children in the Roman family and beyond*, in M. Peachin (ed.), *The Oxford Handbook of Social Relations in the Roman World*, Oxford 2011, pp. 623-642, esp. p. 627.

[32] For a discussion of relevant literary sources and bibliography see B.D. Shaw, *Raising and Killing Children: Two Roman Myths*, «Mnemosyne» Fourth Series 54/1 (2001), pp. 31-77, esp. pp. 38-43. Shaw claims that the *tollere liberos*-ceremony is a modern fiction, which never actually have taken place. For the ceremony of *tollere liberum* see also Berger, *Encyclopedic Dictionary of Roman Law* cit., p. 738.

[33] J. Declareuil, *Paternité et filiation legitimes. Contribution à l'histoire de la famille légale à Rome*, in *Mélanges P.F. Girard: Études de Droit Romain dédiés à M.P.F. Girard*, vol. 1, Paris 1912, pp. 315-352. For further details and bibliography see Shaw, *Raising and Killing Children* cit., pp. 32-33.

[34] Eyben, *Family Planning* cit., p. 21. According to Plutarch (*Romulus* 22.30) Romulus enacted a law in Roman society giving the husband the right to repudiate his wife, if she procured an abortion, while several passages of *Digest* (47.11.4, 48.8.8, 48.19.39) suggest that abortion was prohibited by the emperors Septimius Severus and Caracalla. The emperors Septimius Severus and Caracalla wrote in a rescript that a governor should sentence to temporary exile a woman who had aborted her former's husband baby without his knowledge. See also J. Evans-Grubss, *Marriage Contracts in the Roman Empire*, in L. Larsson Lovén-A. Strömberg (eds.), A*ncient Marriage in Myth and Reality*, Cambridge 2010, pp. 78-101. For injustice against the husband by procuring abortion cf. Cicero, *Pro Cluentio* 32.

in antiquity, though the killing of the fetus by the mother would restrict the father's right over life and death[35]. In Greek and Roman law, the legality of abortion is mainly questioned for the protection of the husband's rights, especially if the abortion took place against his will. Consequently, the documentary and legal evidence about accidental death of the fetus and abortion show that the embryo in Greco-Roman Egypt was mostly protected not as an independent human being, but as a potential heir of his father's property.

The Unborn and the Paternal Inheritance: *Testamenti Factio Passiva.*

Though abortion may have not been treated as homicide in antiquity, however the unborn child had his/her own legal status and several property rights, which were activated by birth if it was born alive[36]. Legal and documentary sources from Roman era recognized the *testamenti factio passiva* of the postumi[37] and as a result unborn children in *ventre matris* at the time of the testator's death were entitled to share in the inheritance[38]. In Roman law of succession, the unborn was regarded as a potential living being[39], and in case of the father's death its succession rights were guaranteed until delivery. However, the unborn child was mainly protected as a potential heir. The Roman jurist Gaius (III 4) mentions that «afterborn children who if born in the lifetime of the parent would have been subjected to his power are self-successors»[40]. Consequently, children conceived in a legitimate marriage were their father's heirs, if he died intestate. If the father had left a will, but he had not included a posthumous child, due to ignorance of his wife's pregnancy, proof of the existence of child would break the will. Roman society had to assure first the paternity and then the survival of such children[41]. It was vital that the father's relatives recognized the child as legitimate son or daughter of the deceased. In

[35] Eyben, *Family Planning* cit., p. 27.

[36] If born alive, even malformed with an animal-like shape as long as it had senses, the child had his legal rights. «Si non integrum animal editum sit» («cum spiritu tamen»: *Dig.* 28.2.12, Ulpian). See Dasen, *Becoming Human* cit., p. 20.

[37] *Postumi* were the children born after the death of the testator within ten months or after the will was made.

[38] H. Kreller, *Erbrechtliche Untersuchungen auf Grund der gräko-Ägyptischen Papyrusurkunden*, Leipzig 1919, pp. 310-311; Taubenschlag, *The Law of Greco-Roman Egypt* cit., p 65.

[39] *Dig*. 1.5.26 («in rerum natura esse»); *Dig*. 1.5.7 («in rebus humanis esse»).

[40] Gaius, *Institutiones* III 4.

[41] J. Evans-Grubbs, *Women and the Law in the Roman Empire. A Sourcebook on Marriage, Divorce and Widowhood*, London-New York, 2002, p. 261.

any case, a curator had to be appointed for both the unborn child and its property. Under a clause of the Praetor's Edict, a widow had to notify her husband's family within a month of discovering her pregnancy and give them the opportunity to recognize the child. The woman should announce her pregnancy to those who would have the entire inheritance or part of it, either upon intestacy or by will. The pregnancy was to be confirmed by other women – at least one midwife –, and the deceased man's relatives were even granted the right to have the birth monitored to be sure that someone else's baby was not brought in secretly[42]. However, if the husband's family accepted the widow's claim, there would be no need for physical examination or monitoring the birth[43]. If the child was born and the relatives continued to claim that it was not a legal heir, the child would still have possession of the disputed inheritance until his/her puberty under the Carbonian Edict[44]. Then the question of ownership

[42] *Dig.* 25.4.1-2; Evans-Grubbs, *Women and the Law* cit., pp. 261-264. *Dig.* 25.4.2.1: the praetor could relax this rule, if the birth was not inspected due to woman's ignorance.

[43] *Dig*. 25.4.12-14.

[44] *Dig*. 37.10. The Edictum Carbonianum granted bonorum possessio to a minor, whose claim to rank among the liberi of a decedent paterfamilias was disputed, but who had not been validly disinherited. See T.A.G. McGinn, *Roman Children and the Law*, in Evans-Grubbs/Parkin (eds.), *The Oxford Handbook* cit., pp. 341-362, esp. p. 349. Hadrian extended the regime of the Edictum Carbonianum to unborn children and the requirements were that the woman should be pregnant both at the time of the death of the paterfamilias and at the time the application was made. The newborn should enjoy status as a *suus heres* to the decedent and not have been validly disinherited. The senatus consultum Plancianum − of unknown date, probably of the early second century – had established similar procedures for pregnant divorcees. It established the duty to provide support for an unborn child in case of divorce, as well as procedures to confirm paternity. The senatus consultum Plancianum ordered that a pregnant woman had to notify («denuntiare») her divorced husband of her condition within thirty days after divorce. The husband had either to send attendants (custodes) to watch the woman until the child was born or to deny his paternity. See Berger, *Encyclopedic Dictionary of Roman Law* cit., p. 699. If he did refuse to recognize the baby, the mother might decide to expose it. The Antonine jurist Scaevola discussed a case where a repudiated wife did not even tell her ex-husband (who had remarried) about her child, but exposed it instead. The boy was picked up and raised by a third party and actually called by his father's name – which implies that the rescuer knew who he was. After the father's death, the rescuer presented the boy, who was recognized by his mother and paternal grandmother and ultimately allowed to inherit his father's estate. See *Dig*. 40.4.29; Evans-Grubss, *Marriage Contracts* cit., p. 87. In addition, another senatus consultum, from Hadrian's time, established a similar procedure for children born during a marriage. See *Dig.* 25.3.3.1. In these cases, the father was still alive and he could treat his children as he wished including disinheriting them. See more generally F. Lamberti, *Concepimento e nascita nell'esperienza giuridica romana: Visuali antiche e distorsioni moderne*, in F. Lamberti et al. (edd.), *Serta iuridica: Scritti dedicati dalla Facoltà di Giurisprudenza a Francesco Grelle*, vol. 1., Napoli 2011, pp. 303-364.

would be resolved in court. If a woman who claimed to be pregnant went to the court to obtain *bonorum possessio* in the name of her unnamed child and lied, she could be charged with *calumnia*[45], which resulted in *infamia*. The penalizing of a widow who remarried too soon and the monitoring of a widow who declared her pregnancy were intended to assure the paternity of a child born after the husband's death and to protect his inheritance[46]. From a legal point of view, both a child born seven months after a legal marriage and a child born ten months after a divorce or the husband's death were considered legitimate[47].

Papyrus documents prove that the death of a baby's father prior to its birth did create some problems to the pregnant woman. The story of a Roman woman, named Petronilla, who was widowed, while still pregnant proves that the elaborate procedure *de inspiciendo ventre*, set out in the Praetor's edict, was followed in second century Egypt. PGen II 103 describes the story of a Roman woman, named Petronilla, who was widowed, while still pregnant. She wanted to vindicate her baby's rights as legal heir of her deceased husband and petitioned the iuridicus of Egypt for a guardian for her young son Lucius Herennius, child of her deceased husband Herennius Valens. If her husband had known about the pregnancy and had provided in the will for the unborn child, there should be no problem. Even if Herennius had not left a will, the magistrate could decide whether the date of the child's birth was compatible with its conception. As already mentioned, a period up to ten months after the husband's death was allowed[48]. Before the childbirth, Petronilla had addressed to a woman recommended by iuridicus and she had Petronilla inspected by a midwife who confirmed the pregnancy. But she was not able to give birth at the midwife's house. In her petition to the iuridicus, Petronilla explained that it was not her fault and that she deserved the benefit of law. However, the relatives appear to have insisted on the iuridicus setting the procedure in motion, according to the regulations[49].

[45] In Roman law, *calumnia* was a deception in legal transactions, interpretation of the law or manifestation of a will. See Berger, *EEncyclopedic Dictionary of Roman Law* cit., p. 378.

[46] Evans-Grubbs, *Women and the Law* cit., p. 264. Already in Twelve Tables, there was the rule that a child born within ten months of the death of his father was his legal heir. *Dig.* 38.16.3.9-11.

[47] *Dig.* 1.5.12: Paul., *Responsa* 19.

[48] *Dig.* 38.16.3.11.

[49] For the details of the procedure see J.F. Gardner, *A Family and Inheritance: The problems of the widow Petronilla*, «LCM» 9.9 (1984), pp. 132-133. Soranus (*Gynaecia* 1.69) recommended that three women should be in attendance along with the midwife to help support the woman during delivery. Death was the penalty for a midwife who smuggled an infant into the

PGen II 104 testifies that Petronilla asked the prefect's help, as her husband's relatives claimed that her son was illegitimate. If they managed to prove this, Petronilla's son would lose all his inheritance rights and she would be liable for *calumnia* for false claim. It is interesting that the relatives who challenged Petronilla's claims were her husband's relatives on his mother's side who as cognates would have less chance of succeeding to him than the relatives from his father's side. We do not know if Herennius had left a will. The fact that he had not nominated any tutor for his young son may suggest that there was no will. However, young Lucius belonged to *sui heredes* and the family of the deceased were probably trying to claim the inheritance on intestacy[50]. Petronilla's mother-in-law was required to have the *ius trium liberorum* in order to invoke the benefits of the *senatus consultum Tertullianum*[51]. The *senatus consultum Tertullianum* provided that a mother who had the *ius trium liberorum* could succeed to her child on intestacy, but if her dead son had children, they excluded her and all other heirs. If the deceased had also brothers and sisters, they also excluded the mother. In case he had only sisters, they shared his inheritance with the mother[52]. The absence of any legal tutor for Petronilla's son may suggest that Herennius had not any brothers. However, his mother and his sister could succeed to the inheritance, only if they could expel young Lucius[53].

A family dispute about the legitimacy of a newborn is also described in PFamTebt 20 from the second century CE Alexandria[54]. Apia had been married to Heracleides without any written agreement, but unfortunately she died after giving birth to their child. Her property passed after death to their baby and Heracleides retained it as the child's guardian. However, Apia's parents sued to recover the property claiming that the child had also died and Heracleides substituted another child in order to avoid returning the property to them and keep controlling it. On the other hand, Heracleides supported that he was claiming his deceased wife's property on behalf of his legitimate child. This papyrus contains the settlement of the case, after the child – or according to the relatives

labor room (Paulus, *Sententiae* 2.24.9). In CE 130 a new set of rules had been introduced to the praetorian edict. See *Dig*. 25.4.1.10.

[50] In Roman law, all children inherited from their father and even those who were released from paternal power on the death of the deceased. In the case there were no *sui heredes*, the next best claim was that of the nearest agnate or agnates (brothers, sisters, nephews) and in the absence of them, members of the gens or extended family (*cognates*) were entitled.

[51] For the *senatus consultum Tertullianum* see Berger, *Encyclopedic Dictionary of Roman Law* cit., p. 699.

[52] Gaius, *Institutiones.* III 3.2-3; *Dig.* 38.17.

[53] Gardner, *A Family and Inheritance* cit., p. 133.

[54] See also Rowlandson, *Women and Society* cit., p. 135.

the substitute child – had died and Heracleides was finally obliged to return Apia's property to her family. Consequently, papyrus documents from imperial times show that Roman and Greek legal practices applied in Egypt appear to sincerely care about the respect of the paternal succession and protect the property rights of the unborn and the newborn as a (potential) heir.

The Legal Status of the Infant.

Exposure.

The survival of newborns in ancient world depended to a certain degree on the physical, demographic and biological circumstances where they grew up, as long as their care, specifically feeding and weaning[55]. During the pregnancy, many parents may have also taken into consideration the possibility of birth defects and what could be done to a defective infant[56]. If children survived their birth, they may still have been at risk of exposure. The attitude towards the status of the newborn is also related to the legal status of the fetus. Besides the abortion already discussed, a more drastic form of family planning in the Greco-Roman world was the killing or exposing of the infants. The practice of infant exposure was a common phenomenon in the ancient world. Exposure of newborns as a survival strategy is best evidenced in Roman Egypt, where many exposed children were picked up from the dung heap and raised by strangers. In the text of *Gnomon of Idios Logos* there is a provision about the people who picked up an exposed baby from the dung heap and adopt him/her[57]. The practice of exposing children is also attested in a letter from 2 BCE between Hilarion and his wife Alis[58]. Ilarion consulted his pregnant wife to raise their child only if it was a boy. In the case that she gave birth to a girl, he advised her to expose it. The economic reasons for child exposure ranged

[55] See A. Pudsey, *Children in Roman Egypt*, in Evans-Grubbs/Parkin (eds.), *The Oxford Handbook* cit., pp. 484-509, esp. p. 487.

[56] An old Roman law included in the Twelve Tables provided that a boy who was strikingly deformed had to be delatus or necatus (or somehow exposed) quickly. See W.V. Harris, *Child exposure in the Roman empire*, «JRS» 84 (1994), pp. 1-22, esp. p. 12. For infants' diseases see Dasen, *Childbirth and Infancy* cit., pp. 294-295.

[57] BGU V 1210.115-6. *Gnomon of Idios Logos* is a document dating from the second century CE, which includes a wealth of detailed information important to the procurator of *Idios Logos* for practical purposes. It mainly deals with fines and confiscation of property.

[58] POxy IV 744. See also Rowlandson, *Women and Society* cit., p. 230; P. McKechnie, *An Errant Husband and a Rare Idiom (P. Oxy. 744)*, «ZPE» 127 (1999), pp. 157-161.

from intense poverty to a desire to conserve a family's property on the basis of the system of partible inheritance. Death was very often the result of child exposure and those who abandoned newborns must have realized that. However, some of them may hope that the child would survive and be picked up by someone else[59]. Slavery was the most common fate of *expositi* who survived. If they were lucky, they might end up in a quasi-filial role in a household or, rather, in a position between foster child and servile dependent, like the *threptoi* of the Greek east or the *alumni* of Rome and the western provinces[60]. In Greek and Roman law, the father had the right to expose his child[61] and after his death the mother acquired the same power[62].

The end of a marriage might be also the reason for a baby's exposure. Marriages were not ended only by divorce. The premature death of a husband could affect his wife and his children's life. The widow continued to have family ties with her husband's family and her newborn would become part of the paternal *oikos*. She had the right, if she wished, to live in the house of her deceased husband until the time of her delivery[63]. At Rome, a posthumous legitimate child born after its father's death had to be reared. However, in a Greek document executed in 8 BCE between the pregnant widow Dionysiarion and Hermione, the mother of Dionysarion's deceased husband, Dionysarion acknowledges that she has recovered her dowry from Hermione and renounced any future litigation regarding the dowry, the husband's estate or any other matter[64]. In ad-

[59] Often children were abandoned at a crossing, or in front of a temple, in the hope and expectation that some passer-by would take care of the child. Krause, *Children in the Roman family* cit., p. 626. Evans-Grubbs highlights the distinction between exposure and infanticide, because intention and means were quite different. See J. Evans-Grubbs*, Infant Exposure and Infanticide* in Evans-Grubbs/ Parkin (eds.), *The Oxford Handbook* cit., pp. 83-107, esp. pp. 83-84.

[60] Dasen, *Becoming Human* cit., p. 95; Evans-Grubbs*, Infant Exposure* cit., p. 95.

[61] See Eyben, *Family Planning* cit., pp. 22-23. In Athenian law, the father had no duty to recognize the newborn as a new member of the family in a ceremony taking place on the fifth, seventh or tenth day after birth (ἀμφιδρόμια). He could either of himself or by the agency of some other person expose the child. As literary sources imply, the right of exposure was a formal one. For further details see A.R.W. Harrison, *The Law of Athens*, Oxford 1968, pp. 70-71.

[62] Taubenschlag, *The Law of Greco-Roman Egypt* cit., p. 151. In the Law Code of Gortyn the mother was permitted to abandon the child if she was divorced and her former husband refused to accept it. See *Leg.Gort*. III 44-IV 23.

[63] Adam, *La femme enceinte* cit., p. 10.

[64] BGU IV 1104. See also O. Montevecchi, Πόσων μηνῶν ἐστιν, «ZPE» 34 (1979), pp. 113-117, esp. p. 115. The story of Greek Dionysiarion is rather different than the one of Roman Petronilla already discussed. In Greek law, the mother of the deceased could succeed him, while Roman law protected the property rights of the unborn legal heir. See also A. Nifosi, *Becoming a Woman* cit., pp. 150-151.

dition, Dionysarion shall not bring action about the expenses of the child's birth and she was allowed to expose her infant and to marry another man in marriage (line 24-25: τὸ βρέφος ἐκτίθεσθαι καὶ συναρμόζεσ[θαι ἄλλῳ] ἀνδρί)[65]. A question that cannot be answered is whether Hermione wished to free herself from the financial burden of raising her son's child or if she also wanted to treat her daughter-in-law with solidarity, as it was not easy for a poor widow to raise a child alone. On the other hand, a baby could be also exposed in the case of divorce. The ex-husband had legal claim over the unborn child his ex-wife was carrying, but he could also suspect in some cases that it was not his[66]. The divorced wife might prefer to get rid of the child rather than growing up the baby alone or with her new husband[67].

Ancient literature contains a large number of references to the practice of exposure and can help us to build a wider picture of the legal status of the exposed[68]. Literary and legal sources give also evidence that unwanted children could be killed immediately after birth, either by drawing or by strangulation[69].

[65] J. Evans-Grubbs, *Women and the Law* cit., pp. 267-268.

[66] Antoninus Pius wrote to a rescript that a father had to support a daughter if it was decided in a court judgment that she had been born to him *iuste*, that was *in iustum matrimonium*. See *Dig.* 25.3.5.6. See also J. Evans-Grubbs, *Children and Divorce in Roman Law*, in Mustakallio-Hanska-Sainio- Vuolanto (eds.), *Hoping for Continuity* cit., pp. 33-47, esp. p. 39 et pp. 42-43.

[67] Dasen, *Becoming Human* cit., p. 86. In contrast with a widow, a divorced wife was not required to observe a waiting period before remarriage. See also Evans-Grubbs, *Children and Divorce* cit., p. 43. For children declared illegitimate or exposed by the divorced mother see Scaevola *Dig.*22.3.29.1; *Dig.* 40.4.29 and M. Corbier, *Child Exposure and Abandonment*, in S. Dixon (ed.), *Childhood, Class and Kin in the Roman World*, London-New York 2001, pp. 52-73, esp. p. 58. For remarriage and life with a stepfather see also S.R. Huebner, *Callirhoe's Dilemma: Remarriage and Stepfathers in the Graeco-Roman East*, in S.R. Huebner-D. Ratzan (eds.), *Growing up Fatherless in Antiquity*, Cambridge 2009, pp. 61-82, esp. pp. 78-79.

[68] Many plays of New comedy imply that in classical Athens parents were under no legal obligation to rear a child. Although an Athenian father, unlike a Roman father, did not have the right to put his child to death, abandoning a newborn child was not considered as infanticide

[69] See Eyben, *Family Planning* cit., p. 15; Corbier, *Child Exposure* cit., p. 60. Seneca in *De Ira* 1.15.2. also refers to the drawing of feeble and deformed («debiles monstrosique»). In one law of 318 CE, emperor Constantine outlawed the killing of one's child, not only newborn (*CTh* ix:15:1) (319). Roman father had the *patria potestas* which included the power of life and death (*ius vitae necisque*) See Gaius, *Institutiones* I 55. However, while the circumstances in which it was allowed to kill a woman subject to manus were determined by law (Dionysius Hal., *Antiquitates Romanae* 2.25.6), there was no law to determine the circumstances in which the head of a family could punish his sons or daughters with death. See also E. Cantarella, *Roman marriage Social, Economic and Legal Aspects*, in Mustakallio-Hanska-Sainio-Vuolanto (eds.), *Hoping for Continuity* cit., pp. 25-32, esp. p. 27. See D.M. Macdowell *The Law in Classical Athens*, London 1978, p. 91. Plutarch (*Lycurgus* 16.1-2) remarks that in Sparta a child was ex-

The phenomenon of child exposure in Greco-Roman world, including Roman Egypt, proves that newborns were not fully protected as human beings. They could be exposed or even killed by their parents, if they were nameless. Roman *patria potestas* enabled the father to decide about the newborn's fate before the *dies lustricus*, the social recognition of the child[70]. The ejection of the child by exposure was supposed to take place before it was regarded as having attained full human status.

Provisions for Unborn and Newborn Children: The Case of Marriage Contracts and Wills.

If a marriage ended in divorce and the wife was already pregnant, the fetus was granted several financial rights towards his father provided that he/she was born alive. Documents from Egypt show that both Roman and peregrine law secured the maintenance of the children, who were at the time of the divorce unborn or newborn.[71] In a noteworthy psephisma of the boule of Ptolemais dated on the first century, it is mentioned that a pregnant woman is granted the right to demand alimony from her divorced husband for herself and her child[72]. In Roman law, a father who refused to support a child could be taken

amined at birth by "the oldest among its fellow tribesmen" and these decided whether to rear or expose it. See R. Sealay, *Women and Law in classical Greece*, Chapel Hill 1990, p. 88. The doctor Soranus of Ephesos, who practiced at Rome at the beginning of the second century, proposed an inspection of the newborn by the midwife laid on the ground to judge its capacity to live, before making the decision to rear it or not. However, he did not provide details about what should happen if the newborn had not the capacity to live. Soranus, *Gynaecia* 2.5. On the other hand, Aelian describes that in Thebes the newborn's exposure was generally forbidden. Aelian, *Varia Historia* 2.7. There existed a law in Thebes prohibiting this practice and only in cases of extreme poverty, a child could be sold.

[70] The newborn's right to live is a Christian, not a Roman concept, and if the father wished to abandon his nameless infant, there were a few legal or social rules to prevent him from doing so. See also C. Laes, *Children in the Roman empire Outsiders Within*, Cambridge 2011, p. 66. Cf. Plutarchus, *Quaestiones Romanae* 288 c. For *patria potestas* see also A. Arjava, *Paternal Power in Late Antiquity*, «JRS» 88 (1998), pp. 147-165.

[71] Cf. POxy LIV 3770 where a widow intervened on behalf of her daughter who had a 1½ year old nursling son, since her son-in-law provided no maintenance for his family. In classical Athens, the rules affecting the children of divorced parents are unfortunately obscure due to lack of evidence. See also Harrison, *The Law of Athens* cit., pp. 44-45.

[72] PFay 22 preserves a series of regulations of one of the Ptolemies, concerning marriage. See also R.S. Taubenschlag, *Die Alimentationspflicht im Rechte der Papyri,* in *Studi in onore di Salvatore Riccobono nel XL anno del suo insegnamento*, vol. 1, Palermo 1932, pp. 505-518.

to court and ordered by a judge to pay for maintenance (*alimenta*): if he refused, his property could be seized as security and sold, until he agreed to comply with the court order[73]. The study of papyrus documents implies that the rules laid down for divorce in PFay 22 were almost similar to those found in marriage contracts coming from Ptolemaic and Roman period[74]. If the wife was divorced, while pregnant, the husband was responsible for her adequate maintenance, and also for that of the baby[75]. In most marriage contracts from the city of Oxyrhynchus, provisions were included in regards to the wife's pregnancy. For example, in the marriage agreement between Sarapion and Thais from the second century Oxyrhynchus[76], it was agreed that if the couple separated, while the wife was pregnant, she would receive 60 drachmas for the childbirth, while in another marriage contract from the same period an extra allowance would be again provided in case of the wife's pregnancy in the event of the divorce[77]. In POxy X 1273 from the third century CE between the bridegroom and the mother of the bride, a provision was also included for the expenses of childbirth after the couple's divorce: «If at the time of separation the bride should be pregnant, the groom shall give to her 40 drachmas for the expenses of the childbirth»[78]. Ada Nifosi in her recent monograph pointed out that the above contract appears to include more Greek than Roman elements, despite the Roman names of the parties, concerning any future child conceived during the marriage. We should have in mind that in Roman law, children born during marriage belonged to the father after the divorce and not to the mother[79].

Provision for the pregnant wife can also be found in the receipt of a loan drawn up between two spouses[80]. In early Roman Egypt, loans between husband and wife could also constitute the written documentation of an otherwise undocumented marriage agreement[81]. It is mentioned that the husband Pausiris

[73] See also Evans-Grubbs, *Children and Divorce* cit., p. 39.

[74] Cf. a divorce contract from sixth century CE: PFlor I 93.19-22 (= MChr 297 = PLond V 1713).

[75] PFay 22.20-25.

[76] POxy III 496.10.

[77] SPP 4.S 115-116 = POxy III 603.

[78] POxy X 1273.33-34.

[79] A. Nifosi, *Becoming a Woman* cit., p. 151.

[80] PMich inv. 89. See. T. Gagos-L. Koenen-B.E. Mcnellen, *A first century archive from Oxyrhynchos or Oxyrhynchite loan contracts and Egyptian* marriage, in J.J. Johnson (ed.), *Life in a Multi-cultural Society: Egypt from Cambyses to Constantine and Beyond*, Studies in Ancient Oriental Civilization 51, Chicago 1992, pp.181-208, esp. pp. 184-187.

[81] See P. Van Minnen, *Re-evaluating a dowry in a Michigan Marriage Loan*, «BASP» 29 (1992), pp. 172-174.

was obliged to give 100 drachmas, if his wife Tauris was pregnant at the time of the divorce. We should also take into consideration the case of Tryphon's second marriage with Saraeus, whose union was described as ἄγραφος. In POxy II 267.18-21 Tryphon acknowledged the dowry that he had received and promised to return it unconditionally. He would also provide to Saraeus an allowance of some kind, if the separation was succeeded by the birth of a child[82].

Besides the provision for childbirth or maintenance of the child, marriage contracts included clauses about the return of the dowry to the spouse and her future children, in the case of divorce. In such a contract from the second century it is stated that in the event of a divorce the dowry should return to the spouse Dionysia and to the future children born of the marital union with Chrysermos[83]. Furthermore, POxy II 265 is a marriage contract coming from the first century Oxyrhynchus between Dionysius and Sarapous. In case of divorce, the dowry was to be repaid by Dionysius and a share of it was reserved for any child of the marriage, who would decide to stay with his father[84]. It is interesting that Dionysius undertook the responsibility of providing for the children in an adequate manner, but only as long as he would remain in possession of the dowry[85]. This clause does not appear to occur in other marriage contracts of the same period.

In marriage contracts from Greco-Roman Egypt, provisions can also be found about the conveying of the property of the predeceased spouse to the surviving partner and their joint children, usually situated after the divorce clause[86]. One of the examples is a contract of the second century BCE: «if either of them [the spouses] should suffer mortal fate and die, let the property left behind belong to the surviving spouse and to the children whom they will have from one another»[87]. In a marriage contract from the second century CE between Heracleides and Tbekis, it was provided that the children should be granted the dowry and the property, in the case that one or both parents

[82] See also Rowlandson, *Women and Society* cit., p. 132; Whitehorne, *Tryphon's Marriage* cit., p. 1272. It is likely that at the time of the contract Saraeus was already pregnant.

[83] PCol VIII 227.16-17.

[84] Mother had little financial responsibility for the children support, but as early as the republican times a husband was entitled to keep a share of the dowry on behalf of the children in case that the divorce was initiated by his wife or her *pater familias*. See also Krause, *Children in the Roman family* cit., p. 633.

[85] POxy II 265.24.

[86] U. Yiftack-Firanko, *Marriage and Marital Arrangements. A History of the Greek Marriage Document in Egypt. 4th century BCE-4th century CE*, Münchener Beiträge zur Papyrusforschung und antiken Rechtsgeschichte, 93, München 2003, pp. 221-229.

[87] PGen I 21 (= PMünch III 62.15-16).

died[88]. The fact that such clause appeared in marriage agreements drawn at an early stage of a couple's shared life, usually before children's birth, suggested that children in Greco-Roman family and society played an important role and should be protected. Moreover, interest for the inheritance of the future children of a couple was expressed in POxy XLIX 3491, a marriage contract from the second century. The bride Chairemonis was given by her parents in marriage to Dionysapollodorus, with whom she had already lived for some years and had several children. The bride's parents declared that after their death their property would be bequeathed to their daughter and if she was not alive to her children, already existing and future by the groom[89]. In this contract, it was stipulated that the children would inherit also from their maternal grandparents, if they died subsequent to the death of the children's mother.

In addition, wills from Ptolemaic and Roman era can illuminate the status of unborn children as legal successors in the society of Greco-Roman Egypt, because they usually included terms in favor of them. Most testators, either Greek or Egyptian, cared for their future children or grandchildren, who would become the legal heirs of their property. In 150 CE Dryton bequeathed his property to his children from his first wife and to the future ones born from his second wife Apollonia[90]. In a similar way, Petosarapis, in the second century CE, bequeathed with his will his property to his son and his future children born from his wife[91]. A provision is also included in the case that the son did not have any successors, when he would die[92]. In PKöln II 100 from 133 CE, Taarpaesis bequeathed land and other kind of property to her children. She has decided to leave no agricultural land to her two daughters, Isidora and Berenice, and bequeathed it to her son Ptolemaios and to her grandson by her daughter Berenice. There is also a provision about the case that Ptolemaios and Isidora died childless.

POxy LXVI 4533 records the will of Achillas. He named as his heirs his future children and Amos and Zoilus, who were probably related to him in some

[88] PIFAO III 5.9. Cf. POxy III 497.12; POxy II 265.

[89] POxy XLIX 3491.10.

[90] PDryton 2.

[91] POxy III 495. 3-4: ἐὰν δὲ ἐπὶ ταύτῃ τῇ διαθήκῃ τελευτήσω μηδὲν κατ' αὐτῶν ἐπιτελέ/σας κληρονόμον] ἀπ[ο]λείπω τὸν υἱ)όν μ[ο]υ Ἐπινείκον μητρ[ὸ]ς [.]χηρ̣ο̣. ῦ̣ς [ἀπὸ] τῆς [α]ὐτῆς πόλεω[ς ἐὰν ζ]ῇ, εἰ δὲ μή, ᾧ ἐὰν ἔχ[ῃ τέκν]α καὶ τὰ ἐπεσόμενά μοι ἕτερα τέκνα, ἢ ἐὰν μὴ γένηταί μοι ἕτερα τέκνα.

[92] Cf. POxy III 490 from the second century CE which preserves the will of Tastraton. She bequeathed her property to the son of a freedman and in the case of his dying childless and intestate, the property would revert to the family of the testatrix.

way: lines 3-6: «I leave as my heirs any children I may have and Amois and Zoilus or whichever one of them survives, of all that I leave in any way whatsoever, on condition that those inheriting our property give within one year from my death to ...». In another will from the second century CE, the testator Acusilaus left his son Dius heir to his property, subject to a life-interest reserved for Acusilaus' wife Aristous[93]. After Dius' death, his future children – and grandchildren of the testator – would receive the property: lines 11-13: «I leave my son Dius by my aforesaid wife Aristous also called Apollonarion, if he lives, and if not, his children, heir to all the property that I leave and to my other slaves and the offspring that may hereafter be born to the female slaves aforesaid». In a similar way, a testator in a donation *mortis causa* from the second century CE expressed his interest for the future children of his legal heirs. In PSijp 44 Petheus distributed his property among his wife and his children. If one of his sons or daughters died childless, it was also provided that his/her share to the paternal property would be bequeathed to his brothers or her sisters respectively[94]. Finally, in POxy I 105 also from the second century, a grandfather included his grandchildren in the division of his property under will, if his daughter would not be alive, when he would die[95]. In most of these private contracts coming from Greco-Egyptian circles interest is expressed about the protection of the patrimony and the maintenance of the property into the family.

Conclusions.

In conclusion, interest for the unborn's rights has been manifested in many areas of the Greek and Roman law, however most of the medical and philosophical literature from the Greco-Roman antiquity treated the status of unborn with ambiguity and uncertainty. Papyrus documents prove that Greco-Roman Egypt protected the property rights of unborn and newborn children in order to ensure their birth and survival. The plentiful documentation provided by various papyrus contracts implies that unborn children were the objects of legal dispositions in as much as they were to become part of their father's household (*oikos*). In Roman law, if the father had died before the child's birth, a series of rules were set in motion at the widow's initiative. They were designed to protect her claim to a share of her decedent husband's estate on behalf of her

[93] POxy III 494.
[94] PSijp 44.7-8.
[95] POxy I 105.6-7.

unborn child. These rules aimed to secure recognition of the child's status as the offspring of the decedent *paterfamilias*, as well as to safeguard the interests of the father's family (or other beneficiaries under a will) in excluding a false claim. Moreover, in the case of divorce, the pregnant wife was usually granted a sum for the birth and the maintenance of the child. In addition, the low life expectancy of the Greco-Roman society and the desire to keep the property inside the family led most testators to provide for their future successors, such as unborn children and grandchildren, in their wills or even in marriage contracts including division of property. Despite the legal claims of the unborn child on his father's property, exposition and abortion were not forbidden and only *patria potestas* and the father's right of life and death were fully protected[96]. Greek and Roman writers noted that it was a peculiarity of the Jews that infanticide and exposition were frowned upon, and all children born were accepted as members of the community. As a result, Christians inherited the view that infanticide was murder, while most Pagan philosophers had not been worried about the morality of infanticide or exposition[97]. On the other hand, petitions discussing cases of violent attack on pregnant women show that legal mechanisms were available in Egypt, mainly for the protection of her own life and not so much for the life of the fetus. Finally, the concern of Greek and Roman law and the legal practice of Roman Egypt was probably first of all the protection of a potential heir of the paternal property, who, if born alive, was treated as a new life with the right to be raised, only if the circumstances allowed.

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[96] Democritus noted that while other living creatures instinctively try to raise their offspring, it is accepted among human beings that the purpose of raising children is to gain certain material advantages. Democritus *Fragmente der Vorsokratiker* 68 B 278 Diels-Kranz. Literary evidence for infanticide from classical antiquity is abundant. S.B. Pomeroy, *Infanticide in Hellenistic Greece*, in A. Cameron (ed.), *Images of Women in Antiquity*, London 1993, pp. 207-19, esp. p. 208.

[97] T. Wiedemann, *Adults and Children in the Roman empire*, London 1989, pp. 36-37.